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HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 936 OF 2005

APPELLANTS

Govind and others

VERSUS

RESPONDENT

: State of Chhattisgarh.

POST FOR JUDGMENT ON 13 NOVEMBER, 2007

Sd/-
Dhirendra Mishra
Judge



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HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 936 OF 2005

<u>APPELLANTS</u>	1.	Govind @ Edi S/o Goverdhan Patel, Aged about 25 years,
	2.	Goverdhan S/o Phul Singh Patel, aged about 48 years.
	3.	Sukhmati Bai, W/o Goverdhan Patel, Aged about 45 years, All resident of Village Paterapali Raitum, Police Chowki Patewa, Thana Tumgaon, District Mahasamund (CG)
	<u>VERSUS</u>	
<u>RESPONDENT</u>	:	State of Chhattisgarh Through : District Magistrate, Mahasamund, Distt. - Mahasamund (CG)

Present:

Mrs. Indira Tripathi, learned counsel for the appellants.
Mr. Sandeep Yadav, Dy. Govt. Advocate for the State.

J U D G M E N T

(Delivered on 13th November 2007)

Dhirendra Mishra, J

This criminal appeal is directed against the judgment of conviction and order of sentence dated 9th December 2005 passed in S.T.No. 375/04 whereby learned I Additional Sessions Judge, Mahasamund has convicted the appellants under Section 304-B of IPC and sentenced each of them to undergo RI for 7 years, pay a fine of Rs.500/- and in default of payment of fine to undergo additional RI for one month.

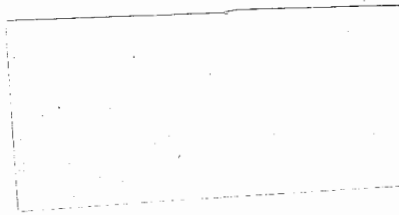
2. Case of the prosecution, in brief, is that appellant No. 1 Govind was married to deceased Sapna Patel in the month of *Chait*, 2004 who sustained burn injuries on 13.9.2004 around 2.30 p.m. She was sent for medical treatment to Dr. Ambedkar Hospital where Dr. Kiran Agrawal (PW-18) examined her, gave M.L.C. report of Ex.P/10 and admitted her in the burn unit. She succumbed to the burn injuries on 18.9.2004 at about 17.40 hours. Allegations against the present appellants are that when the appellants visited her parental home on the eve of *Janmastami* the deceased had complained that the appellants harassed and beat her in the name of demand of dowry. On 15.9.2004 also in the Ambedkar hospital the deceased had stated



that on 12.9.2004 in the night her father-in-law, mother-in-law had abused her and her husband Govind Patel, appellant No.1 herein, had beat her for dowry and because of this she set herself ablaze after pouring kerosene. Report was lodged by Jogiram, father of the deceased, on 20.9.2004 around 18.30 hours vide Ex.p/4. After preparing inquest over the person of the deceased vide Ex.P/1 in the presence of witnesses the dead body was sent for autopsy to Dr. Ambedkar Hospital, Raipur where Dr. Shivnarayan Manjhi and Dr. S.P. Garg conducted postmortem and gave their report of Ex.P/5 wherein they opined that cause of death was cardio respiratory failure as a result of burns and its complications. After completing investigation charge sheet was filed against the appellants.

3. During trial the prosecution examined 19 witnesses in all. Thereafter, statements of the accused persons were recorded in which they denied the evidence appearing against them in the prosecution case and pleaded innocence and false implication. However, learned trial Court after hearing counsel for the respective parties convicted and sentenced the appellants as mentioned in paragraph 1 of this judgment.

4. Learned counsel for the appellants submitted that conviction of the appellants is based on the general and omnibus allegations made by parents and sister-in-law of the deceased, no specific allegation of demand of dowry has been made by them and the Court below has ignored the fact that brother of the deceased has not deposed anything against the appellants. Moreover, complainant Jogiram has admitted in the cross-examination that there is no custom of dowry in their society. The complainant has made material improvement in his statement that on enquiry the deceased had told him in the hospital that her husband beat her after demanding dowry and her father-in-law and mother-in-law had abused her for the above purpose and thereafter, they poured kerosene and set her on fire and then fled from the house. Though in his diary statement of Ex.D/1 and statement before the Executive Magistrate of Ex.D/2 he has stated that her daughter revealed that she had herself poured kerosene on her body and ignited fire.





5. Reliance is placed on the judgments in the matter of **Sunil Bajaj Vs. State of M.P. (2001) 9 SCC 417** and **Tirath Kumari alias Raj Rani and another Vs. State of Haryana, (2005) 12 SCC 561.**

6. On the other hand, learned counsel for the State supported impugned judgment of the trial Court and submitted that deceased was married to appellant No. 1 in the month of *Chait*, 2004 and she died only 5-6 months thereafter in her matrimonial house in the month of September 2004 from the burn injuries. The father, mother and sister-in-law of the deceased have deposed that the deceased was harassed by appellants No.2 & 3 for dowry and her husband appellant No. 1 used to beat her. This was narrated by the deceased few days before the incident when she came to her parents at the time of *Janmastami* and in these circumstances, the appellants have rightly been convicted and sentenced by the learned trial Court.

7. I have heard learned counsel for both the parties and have perused the material available on record as also the impugned judgment.

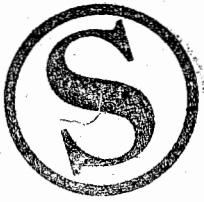
8. Conviction of the appellants is based on the statements of Jogiram (PW-1), father of the deceased, Baisakhin Bai (PW-2), mother of the deceased, and Samari Bai (PW-12), sister-in-law of the deceased.

9. From the statement of PW-18 Dr. Kiran Agrawal, it is evident that the deceased was brought by appellant No. 1 Govind to Mekahara (Medical College Hospital Raipur) at 6.15 p.m. in semi-conscious condition whereupon she referred the patient to burn unit and also informed the police vide Ex.P/10. However, the patient died on 18.9.2004 around 17.40 hours while undergoing treatment. PW-4 Dr. Sufal Kumar Gajbour has stated that the deceased was admitted in the Ambedkar hospital, the police personnel had sent a memo of Ex.P/2 on 14.9.2004, 15.9.2004, 16.9.2004 and 17.9.2004 and asked whether the patient is in a position to give statement or not and on each occasion he had informed that the patient Sapna was not in a fit condition to give statement.

10. However, PW-1 Jogiram has stated before the Court that two persons from the village of the accused persons came to his village and informed that Sapna has sustained burn injuries, on which they went



to village Paterapali to enquire where they were informed that Sapna has been admitted in Mechahara hospital, Raipur whereupon they went there and enquired from Sapna about the incident and then Sapna told him that her husband committed *marpeet* with her for dowry, her father-in-law and mother-in-law also abused her for dowry and thereafter, they poured kerosene, set her on fire and ran away from the house. When this witness was confronted with his diary statement of Ex.D/1 and the statement of Ex.D/2 recoded by the Magistrate and asked that in these two statements he had mentioned that his daughter had herself poured kerosene, then which of the two statements is correct, even then he had stuck to his claim that the accused persons had poured kerosene and set her daughter ablaze. It is also observed that this witness did not lodge any report against the appellants in the police station even after he was apprised by his daughter in the hospital itself that the appellants were responsible for setting her on fire and only omnibus allegations of demand of dowry were made for the first time at the time of inquest and recording of statement of Ex.D/2 by Executive Magistrate on 20.9.2004. In his deposition before the Court he has claimed that demand for motorcycle and T.V. was made by the accused persons, however, this fact was stated for the first time before the Court. From his statement it is also evident that in the brief period of five months, the deceased and her husband visited his home on two occasions and this witness had also gone to the house of accused persons on 2-3 occasions, there was no talk of dowry at the time of marriage, articles were given by way of present to the daughter and custom of demand of dowry is not prevalent in their society. He has admitted in paragraph 8 of his deposition that on the last occasion when appellant Govind came to his house, he stayed there for 2-3 days and in that period Govind and her daughter talked with each other. He has also admitted that Govind and Tilak had come to his home to take his daughter and at that time, she did not complain about any beating or abusing for dowry. In paragraph 10 he has stated that that the deceased had told her mother that she was not keen to return to her in-laws' house because of harassment for dowry and this fact was not disclosed by her daughter to him. However, PW-2 Baisakhin Bai has not stated the above fact in her deposition. On the contrary, PW-11 Yadram, brother of the deceased, has stated that at the time of *Janmastami* festival he



had brought his sister Sapna to his home, her sister Sapna had asked him to take her back to her matrimonial house as festival was getting nearer, whereupon he had gone to leave her to her in-laws' house. He has also stated that earlier behaviour of her in-laws was proper with Sapna and only two days after he left her in her in-laws' house, a message came that Sapna has burnt, whereupon his father went to see her. Baisakhin Bai (PW-2) has also made allegations against the appellants that appellant No. 2 & 3 used to abuse her daughter for dowry whereas appellant No. 1 used to beat her. She has also stated that at the time of *Janmastmi* her son Yadram, (PW-11) had gone to leave Sapna to her matrimonial house. She has stated that Govind, appellant No. 1, came to their house thrice after marriage, however, she has stated that the deceased came to her house only once. She has further stated that before *Janmastami* the girl did not tell her about any dispute. However, later on she has stated that in the month of *Ashad* and at the time of *Janmastami* also her daughter had told her about abuses and beating. This witness has also stated in paragraph 9 that whatever was given at the time of marriage, it was given willingly as custom of demand of dowry before marriage is not prevalent in their caste.

11. As has been held by the Hon'ble Apex Court in the matter of *Sunil Bajaj (supra)* in order to convict an accused for an offence under Section 304-B of IPC, the prosecution is required to establish the following ingredients:

- (i) that death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;
- (ii) such death must have occurred within 7 years of her marriage;
- (iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband;
- (iv) such cruelty or harassment must be for or in connection with demand of dowry.

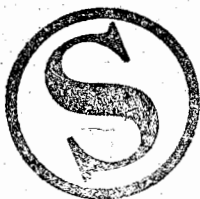
12. In the matter of *Tirath Kumari (supra)* the Hon'ble Supreme Court considering the necessary ingredients of the offence of dowry



death under Section 304-B of IPC and also considering the fact that there was no evidence to show that soon before her death, the victim was subjected to cruelty by her husband or in-laws for or in connection with demand of dowry, set aside conviction and sentence of accused persons.

13. In the instant case also, there is no dispute that deceased died unnatural death and that too, within 7 years of her marriage and as such, first two ingredients of Section 304-B of IPC are established. However, after close scrutiny of statements of parents, brother and sister-in-law of the deceased, who have been examined by the prosecution to establish rest of the ingredients of the offence, this Court is of the considered opinion that version of these witnesses do not inspire confidence for the following reasons:

- (A) that all the above witnesses have made general and omnibus allegations of harassment in the name of demand of dowry by the accused persons and that too, after seven days of the incident on 20.9.2004 for the first time. No report was lodged with the police or other authorities immediately after the incident. The specific demand of motorcycle and T.V. was made for the first time before the Court as this fact is not mentioned in their diary statements;
- (B) that father of the deceased claimed that her daughter made oral dying declaration before him in the hospital on the date of incident itself i.e. 13/14th September 2004, however, treating doctor has categorically stated that the deceased was not in a fit condition to make statement as she continued to be in semi-conscious condition. Not only that, the father also claimed that in her oral dying declaration the deceased had alleged that the accused persons after pouring kerosene had set her on fire, though this fact is missing in the documents of Ex.D/1 and D/2;
- (C) that the appellants are affluent persons whereas the complainant hails from a labour class and they have admitted in their depositions that no dowry was demanded before marriage by the accused persons;



- (D) that in a short span of 5-6 months after marriage the deceased visited her parental home thrice, even her husband Govind also came to the complainant's home on three occasions and on the last occasion he stayed there for 2-3 days with his wife and there was no quarrel between the two in that period;
- (E) that Yadram (PW-11), brother of the deceased, who went to bring his sister on the eve of *Janmastami* and on being asked by her sister took her back to her matrimonial house, has categorically stated that behaviour of in-laws' of Sapna was proper with her. Though wife of this witness Samari Bai (PW-12) has claimed that Sapna told her that her husband beat her for dowry and her mother-in-law and father-in-law abused her. However, she has also admitted in her cross-examination that Govind stayed in her house for 4-5 days with Sapna and at the time of *Rath Yatra* also Govind had come to take Sapna with one person and at that time he stayed for two days. She has stated that she did not disclose about harassment meted out to Sapna by the accused persons for dowry to anybody including the police and she is stating this fact for the first time in the Court. The overall version of this witness appears to be unnatural and the same does not inspire confidence.

14. In the aforementioned situation, presumption arising either under Section 304-B of IPC or Section 113B of the Evidence Act could not be invoked against the appellants and the prosecution, therefore, is held to have failed to establish any case against the appellants.

15. In the result, the appeal is allowed. Conviction of the appellants under Section 304-B of IPC and sentence passed thereon, are set aside. They are acquitted of the above charges. They be set at liberty forthwith if not required in any other case.

Sd/-
Dhirendra Mishra
Judge